



**FACT SHEET**  
**Broadband Technology Opportunities Program**  
**Federal Interest Requirements**

**Overview**

Each recipient and subrecipient of a BTOP financial assistance award holds all real or personal property, whether tangible or intangible, that it acquires or improves, in whole or in part, with Federal funds ("BTOP Property") in trust for the public purposes for which the financial assistance award was made. See 15 C.F.R. §§ 14.37, 24.31. This trust relationship exists throughout the estimated useful life of the BTOP Property, as determined by NTIA, during which time NTIA retains an undivided equitable reversionary interest in the BTOP Property (the "Federal Interest"). The amount of the Federal Interest is computed as the percentage of the current fair market value of the BTOP Property attributable to NTIA's participation in the BTOP project. See 15 C.F.R. §§ 14.32, 14.34 - 14.37, 24.31 - 24.34, as applicable.

During the pendency of the Federal Interest, the recipient or subrecipient shall not:

- Sell, lease, transfer, assign, convey, hypothecate, mortgage, or otherwise convey any interest in the BTOP property without the prior written approval of the Grants Officer.
- Use the BTOP Property for purposes other than the purposes for which the award was made without the prior written approval of the Grants Officer.
- Fail to comply with Federal laws and regulations, Department of Commerce policies, Executive Orders, and Office of Management and Budget (OMB) Circulars that are incorporated into the terms and conditions of the award.

Under the terms and conditions that govern BTOP grant awards, recipients and subrecipients of awards for construction, including Round 1 Infrastructure and Round 2 Comprehensive Community Infrastructure (CCI) awards, as well as Public Computer Center (PCC) awards involving construction, must execute and record appropriate documentation of the Federal Interest (as discussed below). Recipients of Sustainable Broadband Adoption (SBA) and PCC awards without construction are not required to do so, although the Federal Interest nevertheless applies to the BTOP Property under these programs.

**Scope of the Federal Interest Documentation Requirement**

In the case of BTOP financial assistance awards involving construction, recipients must execute and file in the appropriate office(s) documentation of the Federal Interest with respect to the acquisition or improvement, in whole or in part, of BTOP Property (hereinafter referred to as "Covered BTOP Property"). See 15 C.F.R. §§ 14.37, 24.31. The documentation of the Federal Interest must be acceptable in form and substance to NTIA. Failure to properly and timely file and maintain such documentation of the Federal Interest may risk the disallowance of the cost of acquisition or improvement by NTIA. These requirements apply to subrecipients of BTOP financial assistance awards to same extent that they do to recipients.

**Requirements and Approaches to Documenting the Federal Interest**

NTIA prefers that all recipients and subrecipients involved in a single BTOP project use the same approach to document the Federal Interest. For purposes of the below discussion, the requirements and approaches for satisfying this documentation requirement for recipients of BTOP financial assistance awards are applicable to subrecipients of





such awards. The general decision of which approach to use to meet this documentation requirement rests with NTIA, but the recipient and/or subrecipient bear responsibility to properly implement this requirement.

The first approach (and preferred of NTIA) is for the recipient to prepare and properly record a "Covenant of Purpose, Use and Ownership" ("Covenant") with respect to Covered BTOP Property. The Covenant approach may be particularly attractive to recipients that are state or local governments or other entities that face legal constraints on their ability to grant traditional mortgage lien interests. Under the Covenant, the recipient must covenant that it holds title to the Covered BTOP Property in trust for the public purpose of the BTOP financial assistance award and that it will repay the Federal Interest if it alienates an interest in or uses the property inconsistent with that public purpose. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property or fixture is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the Covered BTOP Property during its estimated useful life and that NTIA retains an undivided equitable reversionary interest in the Covered BTOP Property to the extent of its participation in the BTOP project (i.e., the Federal Interest). It may also be necessary to file a UCC-1 with the appropriate state office(s) noting a similar interest in plant, property or equipment that are Covered BTOP Property.

The alternate approach for documenting the Federal Interest in Covered BTOP Property is through the use of an "Agreement and Mortgage" ("Mortgage"), whereby the recipient grants NTIA a first priority lien in the Covered BTOP Property in the amount of the Federal Interest (which may be agreed to be the same as the amount of the Federal funding under the BTOP financial assistance award). The Mortgage must be properly recorded in accordance with state law in the real property records where the Covered BTOP Property is situated in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the Covered BTOP Property during its estimated useful life. If the Covered BTOP Property will be integrated into the recipient's existing plant such that it would be impracticable to separate the Covered BTOP Property from the recipient's existing plant, it may be necessary for the existing lenders and NTIA to discuss how such interests may be shared on a system-wide basis.

To the extent that the Covered BTOP Property consists of personal property, such as equipment, licenses, permits, or fixtures, the recipient must record UCC-1 forms with either the appropriate state office in accordance with that state's codification of the Uniform Commercial Code (UCC), Article 9 (for personal property not affixed to land) and/or recorded in the real property records of the jurisdiction where the real property is located if for assets affixed to the land. The recipient will likely need to execute a Security Agreement, acceptable in form and substance to NTIA, which provides NTIA with a first, unsubordinated position in the BTOP Property. If the recipient has existing secured lending relationships where a drag-net type clause in existing lending instruments purport to encumber after-acquired property, then the recipient may need to assure that the effect of the lien granted NTIA is a purchase money security interest under the UCC. For an indefeasible right of use (IRU), the agreement entered into by the recipient must provide for the Federal Interest, as well as the assignment of the IRU to or at the direction of NTIA if the recipient fails to act in accordance with the terms and conditions of the BTOP financial assistance award.

The obligations of the recipient with respect to Covered BTOP Property remain in effect for the entire estimated useful life of the Covered BTOP Property, regardless of which approach is used. The recipient shall execute and record all documentation necessary to maintain the Federal Interest for the estimated useful life of the Covered BTOP Property (e.g., continuation statements under the UCC).

In addition, the recipient must provide NTIA with a written statement from a licensed attorney in the jurisdiction where the Covered BTOP Property is located in the case of real property, or in the jurisdiction where the UCC-1 form is filed in the case of personal property, certifying that the Federal Interest has been protected, as required under the BTOP financial assistance award and in accordance with state and local law and, if the second alternative is used, that the NTIA security interest is in a first, unsubordinated position. The attorney's statement must be provided to the Grants Officer, together with the originally recorded Covenant or Mortgage, and filed UCC-1 form, as applicable.





The following matrix summarizes the approaches for satisfying the Federal Interest documentation requirement for Covered BTOP Property:

Type of Covered BTOP Property	Covenant Approach	Lien Approach
<b>Real Property</b>	<ul style="list-style-type: none"><li>■ Properly executed and recorded Covenant of Purpose, Use and Ownership; in the case of leases, easements, rights.</li></ul>	<ul style="list-style-type: none"><li>■ Properly executed and recorded Agreement and Mortgage; in the case of leases or other non-fee interests, the recipient's interest in the Covered BTOP Property must be as least as long as the Federal Interest and the underlying agreement must allow for recording of the Federal Interest.</li></ul>
<b>Fixtures (personal property so affixed to the land that it is legally considered part of the realty)</b>	<ul style="list-style-type: none"><li>■ UCC-1 filed in the jurisdiction where the real property is located, renewed as necessary as long as the Federal Interest in the fixture; in the case of leases, easements, rights-of-way, or other non-fee interests, the recipient's interest in the property must be as long as the Federal Interest and the underlying agreement must allow for the documentation of the Federal Interest.</li></ul>	<ul style="list-style-type: none"><li>■ UCC-1 filed in the jurisdiction where the real property is located, renewed as necessary for as long as the Federal Interest in the fixture; in the case of leases, easements, rights-of-way, or other non-fee interests, the recipient's interest in the property must be as long as the Federal Interest and the underlying agreement must allow for the documentation of the Federal Interest. The recipient will also likely need to execute a Security Agreement, acceptable in form and substance to NTIA.</li></ul>
<b>Personal Property, both tangible and intangible</b>	<ul style="list-style-type: none"><li>■ UCC-1 filed in the central filing office as directed under the State's Uniform Commercial Code, Art. 9 noting the Federal Interest under the Covenant, renewed as necessary for as long as the Federal Interest; or if another legal filing scheme pre-empts the UCC, then in accordance with such requirements.</li></ul>	<ul style="list-style-type: none"><li>■ UCC-1 filed in the central filing office as directed under the State's UCC, Art. 9, renewed as necessary for as long as the Federal Interest; or if another legal filing scheme pre-empts the UCC, then in accordance with such requirements; if a pre-existing lending relationship exists covering such assets, then the requirements for a purchase money security interest under the UCC must be complied with. The recipient will also likely need to execute a Security Agreement acceptable to NTIA in form and substance.</li></ul>

### Timing Requirements

Documentation of the Federal Interest is to be perfected and recorded/filed in accordance with state and/or local law concurrent with or as soon as possible following any purchase, lease or other acquisition of Covered BTOP Property and, unless otherwise approved in writing by the Grants Officer, not later than the date on which the BTOP financial assistance award is officially closed-out. See 15 C.F.R. §§ 14.70-73; 24.50-52, as applicable. Preferably, the recipient will work with NTIA to ensure that the requisite documentation of the Federal Interest is perfected and recorded/filed as follows:





- For in-kind contributions of Covered BTOP Property, the date on which the contribution is made.
- For other acquisitions of Covered BTOP Property, the time at which the recipient first obtains an interest in the Covered BTOP Property.

### Frequently Asked Questions:

#### [When does a BTOP grant award involve “construction” making the recipient subject to the requirement to execute and record appropriate documentation of the Federal Interest?](#)

The requirement to execute and record appropriate documentation of the Federal interest applies to BTOP awards for which the major purpose of the project is construction. Chapter 17 of the Department of Commerce Updated Grants and Cooperative Agreements Interim Manual (“DOC Grants Manual”) states that such construction may include the “construction of new buildings, completion of shell space in existing buildings, renovation or rehabilitation of existing buildings, . . . construction or development of real property, [and] infrastructure improvements (e.g. site preparation; utilities; streets; curbs; sidewalks; parking lots; and other streetscaping improvements, etc.).” In contrast, alteration of facilities incidental to a non-construction purpose is not considered construction for purposes of this analysis, and such activities do not trigger the requirement for the recipient to execute and record appropriate documentation of the Federal interest.

NTIA considers the major purpose of BTOP projects to be “construction” under Chapter 17 of the DOC Grants Manual in the case of grants awarded for (1) Infrastructure; (2) CCI; and (3) PCC projects with a construction component. Recipients and subrecipients of such awards must execute and record appropriate documentation of the Federal interest in real property, broadband facilities, and equipment acquired or improved with BTOP grant funds, in accord with the terms and conditions of their respective awards.

In contrast, SBA and PCC projects that do not include a construction component are not “construction” awards under Chapter 17 of the DOC Grants Manual. Even if a recipient of such an award engages in minor construction activities, NTIA considers such activities to be incidental to the non-construction purposes of the award. In general, at a minimum, minor construction would include such activities as the installation of cabinetry, doors, windows, window frames, window coverings, system furniture, interior finishes or flooring, interior partitions, HVAC equipment, and sinks, faucets, or other fixtures; the replacement or repair of wallboard or ceilings; rough-ins for plumbing or electrical work; and painting; wallpapering; and carpeting. While the Federal interest nevertheless attaches to any real property, broadband facilities, and equipment acquired or improved with funds from such awards, recipients and subrecipients are not required to execute and record appropriate documentation of that interest.

#### [May a recipient or subrecipient designate certain facilities as constructed with Federal funds and certain facilities as constructed with matching non-federal funds?](#)

No. The Federal government has an undivided equitable reversionary interest in all BTOP Property (as defined above) during its estimated useful life (i.e., the Federal Interest). The amount of the Federal Interest is computed as the percentage of the current fair market value of the property attributable to NTIA’s participation in the BTOP project. With respect to Covered BTOP Property (as defined above), the recipient or subrecipient must perfect and record/file appropriate documentation of the Federal Interest. However, for convenience it may be agreed that the amount of Federal funding under the BTOP financial assistance award shall be the value of the Federal Interest for Covered BTOP Property.





May a recipient or subrecipient use its existing regulatory or financial depreciation schedule to measure the estimated useful life of BTOP Property?

No. NTIA determines the estimated useful life of BTOP Property. NTIA is developing an estimated useful life schedule that will provide uniform estimated useful life rules for BTOP Property.

Does the Federal Interest apply to BTOP Property contributed to the project by a recipient, subrecipient, or third-party to satisfy an in-kind matching requirement?

Yes. As stated above, the Federal Interest is an undivided interest. Thus, NTIA generally acquires a Federal Interest with respect to in-kind contributions of BTOP Property. In addition, to the extent that an in-kind contribution consists of Covered BTOP Property, the recipient or subrecipient must perfect and record/file appropriate documentation of such Federal Interest no later than the date the contribution is made.

### **Additional Resources:**

For additional information pertaining to the Federal Interest or to the security interest requirement, please refer to the following resources:

- Department of Commerce Updated Grants and Cooperative Agreements Interim Manual, Chapter 17, "Construction Awards," available at:  
<http://oam.eas.commerce.gov/docs/Ch17%20Construction%20Awards%20%5BDecember%202007%5D.pdf>
- Department of Commerce Financial Assistance Standard Terms and Conditions, Section K, available at:  
<http://oam.eas.commerce.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf>
- Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, 15 C.F.R. at §§ 14.30-14.37
- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 15 C.F.R. at §§ 24.31-24.34
- In re Joliet-Will County Community Action Agency, 847 F.2d 430 (7th Cir.1988)

